

GENERAL LEGAL ISSUES

Jurisdiction and Venue

Subject matter jurisdiction.

- Jurisdiction over dependency and TPR proceedings is vested in the circuit court. §§ 39.013(2), 39.801(2).
- The court hearing the dependency matters may also exercise jurisdiction over guardianship proceedings (Chapter 744) and relative custody proceedings (Chapter 751) involving the same child. § 39.013(3).
- The court that conducted TPR proceedings is granted continuing jurisdiction for purposes of adoption (Chapter 63). § 39.813.
- Dependency issues may arise in other cases such as dissolution, custody, delinquency, and criminal. In the absence of local rules, transfer of such issues (custody, visitation, dependency, child support) to the court that hears dependency cases is provided by Rule 8.205(a).
- The shelter hearing shall be held by the circuit court or by the county court if so designated by the chief judge of the circuit court. § 39.402(6)(a). Pursuant to § 39.402(12), any hearings conducted by a judge other than the juvenile court judge must be reviewed within 2 working days of the original shelter hearing by the juvenile court judge.

Personal jurisdiction. Jurisdiction over the child attaches upon any of the following taking place:

- when the initial shelter petition, dependency petition, TPR petition, or a petition for an injunction to prevent child abuse issued pursuant to section 39.504, is filed;
 - when a child is taken into the custody of the department;
 - when a petition or affidavit for an order to take into custody is filed; or
 - when any other petition authorized by chapter 39, Florida Statutes is filed.
- § 39.013(2); Rule 8.201(a).

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Dependency proceedings are included in the UCCJEA's definition of "custody proceeding" and as a result are subject to the UCCJEA. §§ 61.501-61.503.

- Any pleading commencing proceedings under § 39.013 must be accompanied by an affidavit conforming to § 61.522. See Fla.Sup.Ct. App.Fam.L. Form 12.902(d) for UCCJEA Affidavit.
- Under § 61.517, Florida courts may exercise temporary emergency jurisdiction if the child is physically in Florida and has been abandoned or it is necessary in an emergency to protect the child from actual or threatened mistreatment or abuse. Florida courts may also exercise jurisdiction if the child, the child's parents, or the child and at least one parent or person acting as parent enjoy a significant connection with Florida and there is

substantial evidence concerning the child's present or future care, protection, personal relationships, and training in Florida. § 61.514.

Transfer of jurisdiction. Jurisdiction over dependency cases can be transferred within a circuit, between circuits, and between states, typically for reasons dealing with venue issues and convenience. Rule 8.205.

If a case filed in another division appears to "constitute a dependency or the termination of parental rights," the court may transfer the case to the juvenile division within circuit court, which then assumes jurisdiction over custody, visitation, dependency, and child support issues for the child. Rule 8.205(a).

Transfer within the state. Jurisdiction over dependency cases may be transferred within the state for the best interests of the child and promotion of efficient administration of justice:

- from one county to another within the same circuit, and from one circuit to another;
 - either before adjudication (to a county where witnesses are available) or after adjudication (to the county of the child's usual domicile or to another county).
- Rule 8.205(b).

Transfer between states. Cases may be transferred between states. Rule 8.205(c).

- When a Florida court learns of pending custody proceedings in another state, the Florida court should communicate with the out-of-state court to ensure that the issues may be litigated in the most appropriate forum. § 61.520.
- In the case of a pending custody proceeding before the foreign court, the Florida court must decline exercise of jurisdiction unless the foreign court stays its proceedings to allow assumption of jurisdiction by Florida. § 61.519(1).

Transfer of jurisdiction is distinct from Interstate Compact on the Placement of Children, which, for dependency purposes, involves the placement of children by the sending agency to the receiving state, typically under supervision of the child welfare agency in the other state, rather than the transfer of the court's jurisdiction from one state to another. §§ 409.401-409.405. (*See Interstate Compact section*)

Retention of jurisdiction in dependency cases.

- If a child has been adjudicated dependent, the court retains jurisdiction unless relinquished by its order, until the child reaches 21 years of age, with the following exceptions:
 - If a young adult chooses to leave foster care upon reaching 18 years of age. § 39.013(2)(a);
 - If a young adult does not meet the eligibility requirements to remain in foster care under § 39.6251 or chooses to leave care under that section. § 39.013(2)(b);
 - If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain jurisdiction for up to a year following the young adult's 18th birthday for the purpose of determining whether appropriate services, that were required to be provided to the young adult before reaching 18 years of age, have been provided. § 39.013(2)(c);

- A situation involving special immigrant juvenile status. § 39.013(2)(d);
 - “Child” is defined as a person under 18, unmarried, and not emancipated by court order. § 39.01(12).
- Within 30 days after a young adult has been readmitted to foster care under § 39.6251, the CBC lead agency must assign a case manager to update the case plan and the transition plan and to arrange for the required services. Updates to the case plan and the transition plan and arrangements for the required services must be undertaken in consultation with the young adult. The department must petition the court to reinstate jurisdiction over the young adult. Notwithstanding § 39.013(2), the court must resume jurisdiction over a young adult if the department establishes that the young adult continues to meet the eligibility requirements for readmission to care. § 39.6251(6)(b).
- Jurisdiction of the court terminates upon marriage or emancipation of the child. See § 39.01(12).
- Jurisdiction is maintained for purposes of custody, dependency, visitation, and child support issues, so if the child is placed with relatives who later divorce, custody of the child will be determined by the court presiding over the dependency matter rather than by the court presiding over the dissolution action. State Dept. of Health & Rehabilitative Services v. Pendino, 625 So. 2d 1292 (Fla. 2nd DCA 1993).

Retention of jurisdiction in age of majority cases: If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain jurisdiction for up to a year following the young adult's 18th birthday for the purpose of determining whether appropriate services, that were required to be provided to the young adult before reaching 18 years of age, have been provided. § 39.013(2)(c).

Retention of jurisdiction in special immigrant status cases. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under § 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday. §§ 39.013(2)(d), 39.5075(6).

Retention of jurisdiction in termination of parental rights cases.

- following TPR and permanent commitment of a child to DCF, the court retains jurisdiction over the child until adoption is finalized § 39.812(4);
- during this time, the court may consider continued relative and parental contact, as well as appropriateness of adoptive placement under § 39.811(7); and
- under § 39.813, the court that granted TPR retains jurisdiction over all matters pertaining to the adoption.

Termination of jurisdiction. The court in a dependency proceeding may terminate its jurisdiction under the following circumstances:

- The court finds that DCF has not proved its case and the child is not dependent, and dismisses the case. § 39.507(4).
- The court adjudicates the child dependent while in the custody of one parent and places the child with the noncustodial parent;
 - The court may order the parent with whom the child has been placed to “assume sole custodial responsibilities” and may provide reasonable visitation for former custodial parent.
 - The court may terminate its jurisdiction under § 39.521(3)(b)(1), or the court may order placement with the other parent while retaining jurisdiction and supervision under § 39.521(3)(b)(2).
- After termination of parental rights, the court retains jurisdiction until the child is adopted. § 39.811(9);
 - The court must retain jurisdiction in cases of permanent guardian of a dependent child. § 39.6221(5);
 - The court shall continue to supervise cases of permanent placement with a fit and willing relative and another planned permanent living arrangement. §§ 39.6231(5), 39.6241(3).
- The child has been returned to parents or legal custodians, residing safely and continuously with the parents for at least 6 months. § 39.521(7). A motion may be filed by any party to terminate DCF supervision, jurisdiction of the court, or both, pursuant to Rule 8.345(b). However, the court cannot terminate its jurisdiction unless the child is returned to parents or placed in home providing the child with permanency and has been there for six months. Rule 8.345(b), 8.415(f)(5).
 - Termination in such cases is not mandatory, and many courts will choose to terminate supervision while retaining jurisdiction until the child reaches the age of 18. § 39.521(7).

Orders entered pursuant to Chapter 39 which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a child shall take precedence over other orders entered in civil actions or proceedings. However, if a court has terminated jurisdiction, such order may be subsequently modified by a court of competent jurisdiction in any other civil proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child. §39.013(4).

Venue. Chapter 39 does not contain venue provisions for dependency cases. Accordingly, the general venue statute for civil proceedings, § 47.011, applies. That provision states that venue in a dependency case is either in the county in which the respondents (child and parents) reside or the county in which the cause of action accrued (usually where the alleged abandonment, abuse, or neglect of the child occurred). Additional information related to venue can be found in §§ 47.011, 47.122, Rule 8.205, and in the UCCJEA.

